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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/637,504	08/11/2000	Allen House	LIFE-010	7600

7590 04/28/2003  
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EXAMINER

ALEXANDER, LYLE

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 04/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/637,504

Applicant(s)

HOUSE ET AL.

Examiner

Lyle A Alexander

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17:2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hurtig et al., Davis, EP 0803288 or WO 95/12117.

See the appropriate paragraph of paper 6 for the teachings of Hurtig et al., Davis, EP 0803288 and WO 95/12117.

Claims 1-2,4,9-10,12 and 14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by EP 0374115.

The original specification teaches on page 4 lines 8+ the gimbaled actuator is a device having a planar compression element that is suspended from a holder so that the compression element becomes parallel to the surface it contacts during actuation.

1-2,4,9,10,12,14EP 0374115 teach a positive displacement pump having a pump chamber(16-1), displacement member(25-1) and a flexible pump chamber (column 4 lines 1+) constructed from flexible material joined together in a sealed relationship at their perimeters. The claimed holder has been read on the taught fixed base member(10-1) and the hinged top member(11-1). Pump chamber(16-1) is supported such that displacement member(25-1) becomes parallel to the surface it contacts during actuation. There are various lever arms (such as 22-1) that are under the control of a motor and meet the limitation of automatic movement means.

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Claims 1-5,7,9-12,14 and 16-20 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Yassinzadeh et al.

The original specification teaches on page 4 lines 8+ the gimbaled actuator is a device having a planar compression element that is suspended from a holder so that the compression element becomes parallel to the surface it contacts during actuation.

Yassinzadeh et al. teach a device having a planar pressure chamber(22) that is supported by a top plate(8) and bottom plate(10). Solenoid (42) has driver(44) which contacts top(8) mechanically flexing or deflecting the top. The compression element, driver(44), becomes parallel to the surface during actuation. Coagulation reagent(36) is applied to the bottom(10) aligned with passageway groove(16) where sample(28) will mix with the reagent and the subsequent reaction will be analyzed by photodetector(32). This has been read on the claimed test strip.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 6,8,13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0374115 or Yassinzadeh et al.

See EP 0374115 and Yassinzadeh et al. supra.

The art is silent to the claimed dimensions or the amount of force applied.

The court decided In re Rose (105 USPQ 237) that changed in size are within the skill of the art. It is desirable when making devices for commercial sale to make them

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as small as possible to gain the advantages of low storage and shipping cost. It would have been within the skill of the art to modify EP 0374115 or Yassinzadeh et al. and make the compression pads as small as possible in view of Rose and to gain the above advantages.

The court decided In re Boesch (205 USPQ 215) that optimization of a result effective variable is ordinarily within the skill of the art. A result effective variable is one that has predictable and well known results. The amount of force required to an actuator to achieve the desired fluid transfer characteristics would have been a result effective variable. It would have been within the skill of the art to further modify EP 0374115 or Yassinzadeh et al. and use a compressive force on the bladder ranging from about 1 to 1.5 lbs.

### ***Response to Arguments***

Applicants' 2/26/03 arguments were partially convincing in vacating of the 35 USC 103 rejection over Hurtig et al., Davis, EP 0803288 and WO 95/12117. However, the new art cited in the 2/26/03 IDS has been found pertinent and applied above.

Applicants' traverse the rejections of claim 1 under 35 USC 102(b) as being clearly anticipated by Hurtig et al., Davis, EP 0803288 and WO 95/12117. The Office maintains all of these references teach a device having a planar compression element that is suspended from a holder so that the compression element becomes parallel to the surface it contacts during actuation which is consistent with Applicants' definition on

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page 4 of the original specification. The claim also requires an actuating means which is also taught by each of the references above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A Alexander whose telephone number is 703-308-3893. The examiner can normally be reached on Monday, Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 703-308-4037. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9319 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.



Lyle A Alexander  
Primary Examiner  
Art Unit 1743

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April 23, 2003